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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,224	01/26/2004	Byoung-Woo Cho	1781.1001	6552

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STAAS & HALSEY LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

HANEY, RICHAE LEE

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/763,224		CHO, BYOUNG-WOO	
	Examiner		Art Unit	
	Richale L. Haney		3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/22/2006 has been entered.

Response to Amendment

Applicant's amendment filed 5/24/2006 has been considered. Claim 1 has been amended. Claims 12 –13 have been cancelled. Claims 1 –11 and 14 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites that a sweatband is attached to the inside of the head-receiving portion. Claim 3, depends from claim 1, and recites that the head-receiving portion is a headband. It is unclear how the headband is both a head-receiving portion and attached to the head-receiving portion.

Claim Objections

3. Claim 14 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The first stretchable yarn including high twist yarn has been recited in claim 1.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 – 9, 11 and 14, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Higgs (WO 01/05259). The device of Higgs discloses a cap made from woven, stretchable fabric with twisted yarns and a knit sweatband (12) comprising stretchable, twisted yarns, partially covering the foam core (22) attached to the lower peripheral edge (Figure 4, 4) at the inside of the head receiving portion (Figure 2) wherein the crown formed from a plurality of stretchable gores (3, 4, 5, 6, 7, 8). It is noted that all natural yarns (i.e. cotton) are inherently spun/twisted and therefore both the weft and warp yarns are formed from high twist yarns. A shape tape (17) is attached to the head receiving portion and a sweatband (12) along a lower edge of the crown, wherein the sweatband (12), the shape tape (17) and

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the crown are wholly pressed and stitched together with a stretchable yarn (Column 45 – 56), along a lower edge of the crown (See Figure 7, clearly shows the thread extending through the crown, the shape tape, and the sweatband). Moreover, according to Steve Warner's text "Fiber Science" Hooke's Law teaches that all materials have the ability to stretch and recover (page 136 –138). Both the sweatband and the crown receive the head of the wearer and are interpreted to be head receiving portions. The sweatband (12) comprises an outer stretchable cotton terry toweling is covering (Column 6, lines 29 – 31) a band of elastic material (13).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Higgs in view of Nebeker (5,566,395). Higgs substantially discloses all of the claimed invention

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but is lacking the particular type of foam core. Nebeker teaches a urethane foam used as the core for a sweatband (Column 1, lines 54- 56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Higgs by using a polyurethane (a type of urethane) foam as taught by Nebeker in order to draw moisture away from the hat (Column 2, lines 23 –24).

Response to Arguments

9. Applicant's arguments filed 5/24/2006 have been fully considered but they are not persuasive.

10. Applicant submits that the device of Higgs is lacking a shape tape. The applicant's disclosure does not provide structure or examples of a shape tape. Interpreted in the broadest reasonable sense a shape tape is an elongated fabric, which provides stability. It can be seen in Figure 3 of Higgs that the crown portion has an interior elongated fabric, a shape tape, which is folded and secured to the crown and would inherently provide increased stability and support.

Conclusion

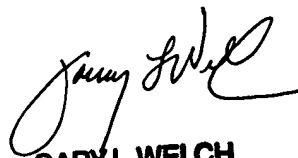
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L. Haney
Patent Examiner
Art Unit 3765
August 3, 2006

RLH



GARY L. WELCH
PRIMARY EXAMINER